IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.268 OF 1996

Ferromet Concentrates,
a division of M/s.Sociedade
de Fomento Industries Limited,
Erasmo Carvalho Street,
P.Box No.31, Margao, Goa. .... Petitioner.

Vs.

1. State of Goa
represented by Chief Secretary,
with office at Panaji.

2. Directorate of Industries
and Mines, Mines Wing,
Udyog Bhawan,
Panaji, Goa.

3. Gomantak Investment Pvt. Ltd.,
with office at Damodar Bhavan,
Opposite High Court,
Panaji, Goa.

4. Union of India,
through the Secretary,
Ministry of Mines and Minerals,
New Delhi. ..... Respondents.

Mr. M.S. Usgaonkar, Sr. Advocate with Mrs. Sudin M.S. Usgaonkar and Mr. Sanjay Sardesai, Advocates for the petitioners.

Mr. N.K. Sawaikar, Addl. Government Advocate for respondents No.1 and 2.

Mr. S.K. Kakodkar, Sr. Advocate with Mr. Joel D'Souza, Advocate for respondent No.3.

Mr. J.S. Vaz, Addl. Central Government Standing Counsel for respondent No.4.

CORAM: F.I. REBELLO &
P.V. HARDAS, JJ.

DATE : JULY 29, 2003.

ORAL JUDGMENT: (Per REBELLO, J.)

The petitioner by the present petition has prayed for the following reliefs:

(a) that this Court be pleased to direct the respondents to notify area in respect of

> Sukerkar's mine for regrant and dispose of the application dated 9.8.1988, marked Exhibit "A", which is still pending;
>
> (aa) The action of the State Government and Central Government in granting prospecting licence and mining lease vide orders dated 24.8.1992 and 6.8.1996 respectively be declared void and in any event quashed and set aside;
>
> (b) restrain respondents No.1 and 2 from granting the Prospecting Licence or Mining Lease in respect of the said area to any other person until application of the petitioner Exhibit "A" is disposed of.

. This petition came to be dismissed by an order dated February 12, 2001 by a Division Bench of this Court, on the ground of laches. Being aggrieved, the petitioner preferred S.L.P. before the Apex Court. Leave was granted.The appeal was allowed and the matter was remanded to this Court for fresh decision. That is how, the matter has come up for rehearing before this Court.

. Along with this petition, there was another petition, earlier filed before the Delhi High Court by one Dr. Nishikant Sukerkar which was transferred to this Bench of this High Court by the Apex Court. By a separate order, that writ petition has also been disposed off.

2. It is the case of the petitioner that they had applied for a Prospecting Licence for an area admeasuring 11.30 hectares by application dated August 9th 1988. The area applied for formed part of the original mining concession granted to late Narcinva P. Sukerkar in an area of 22.0807 hectares. The petitioner has averred that Sukerkar Concession was bounded on the southern side by concession/ lease

granted to Shri Manohar Hiru Naik Parulekar and now to his widow Smt. Geetabala M.N. Parulekar. The petitioners contend that they were interested to have the renewal of the Mining Lease in the name of Sukerkar, with whom the petitioner's were having a contract and consequently renewal application was made by them on 18.5.93. An Agreement of Sale had been entered into dated 6.11.1972 between the petitioner and Sukerkar whereby petitioner had agreed to buy the entire quantity of iron ore, lumpy and/or fines etc. raised from the late Sukerkar's mines situated in Concession No.7, which was to remain in force for a period of 20 years i.e. upto 5th November, 1992. The renewal application of the mining lease in the name of Sukerkar was made by the petitioner. The petitioners were informed in connection with their letter dated 18.5.93 by letter dated 20.7.1993 that the area is not free for grant or is an existing lease for renewal. As the petitioner received letter dated 20.7.1993, the petitioner did not pursue their application for the Prospecting Licence as that area was not declared free for grant. It is pleaded by the petitioner that in terms of Rule 59 of the Mineral Concession Rules, 1960 in respect of land already held on lease or concession, no prospecting licence is to be granted unless land is declared free for grant. It is then averred that after the letter dated 20.7.1993, the respondents have not issued any declaration, declaring that the said land is free for grant. It is then stated that had the application of the petitioner for prospecting licence been granted, the petitioner could have extended the mining operations in adjoining area without any restrictions. For economic reasons, it is

set out that the operations of the petitioner in part of the mining lease of Smt. Geetabala had been closed with effect from 17.11.94 with the permission of the Central Government. It is contended that the petitioner was considering whether by some technical means it is possible to extract the ore from the mine of Parulekar upto the boundary line. But this could

not be done unless the adjoining area of Sukerkar is available for operation. It is then set out that it could not be done without knowing what was the status in respect of area earlier granted to Sukerkar. Accordingly, the petitioner addressed a letter to the heirs of Sukerkar dated 4.12.1995 wherein it was set out that they had received a letter from the Government dated 20.7.1993, setting out that the subject mine, is not free for grant and they would be grateful if they are informed of the present status of the mines. A letter was received from Dr. Nishikant Sukerkar dated 8.12.95 setting out that the mine was cancelled by the Government by Order dated 6.4.76 and the revision application was dismissed on 10.5.1978 and, therefore, the said area was free for grant. The petitioner's have therefore, prayed for directing the respondent to notify the area in respect of Sukerkar Mines for regrant and dispose of the application dated 9.8.1988, which is still pending.

3. The petition came to be subsequently amended. By the amendment it is pleaded that respondent No.1, by Notification dated 5.1.77 had notified the area applied by the petitioner as free for grant of mining lease. This was after the Government Notification dated 5.4.76. determining the mining lease under T.C. No.7 dated 12.3.55 granted to Shri Narcinv P. Sukerkar. By that Notification, it was declared that the mining concession is open for regrant. It is also set out that on 8.5.1979, notice under Mining Leases Modification of Term Rules 1956, was issued to show cause as to why mining concession granted to Sukerkar should not be modified into lease. By Order dated

20.10.1981, the concession granted to Sukerkar, was modified into mining lease by the Controller of Mining Leases. It is also set out that the mining lease applied for by respondent No.3 in the year 1984 was converted by the respondent No.1 into prospecting licence as per the order of Central Government dated 3.8.1989. It is set out that the order of the Central Government dated 3.8.1989 permitting the application of respondent No.3 for Mining Lease to be converted into application for prospecting licence is bad in law, as also the grant of mining lease by the State Government in favour of respondent No.3 and its approval by the Central Government is bad in law. There was no Notification issued for regrant after the Goa, Daman & Diu Mining Concession (Abolition and Declaration as Mining Lease, 1987) hereinafter regard to as the 1987 Act, which came into force from 22.5.1987. The regrant was in respect of mining concession, which was granted under the Portuguese Decree, which was abolished and converted into leases only in the year 1987 by the Act of 1987 Earlier the Controller of Mines had attempted to convert the concession into leases under the provisions of Section 16 of the Mines and Mineral Regulation and Development Act, 1957 (hereinafter, referred to as "MMRD Act"). That was challenged and the Notification was quashed. Subsequently, Section 16 of the MMRD Act was amended in the year 1972 and a fresh show cause notice was issued by the Controller seeking conversion of concessions into leases, which was also challenged before this Court. By Judgment dated 29.9.1983, the respondent-Government and the Controller of Mines were prohibited from enforcing the Notification dated

10.3.1975. The application of the petitioner, it is pointed out, is of 1988 and subsequent to the Abolition Act, and has been validly made,and as such the application of mining lease of Respondent no.3 dated 20.12.1984 could not have been considered at all. It is, therefore, submitted that the application dated 20.12.1984 for prospecting licence is not valid in the eyes of law. It is set out that no power has been given for converting mining lease application into prospecting licence and if there is such a power, at the highest, the application can be considered from 3.3.1989 and not from 20.12.1984. It is also set out that as respondent No.3 has not obtained surface rights, and surface rights are held by the petitioner's concern, no conversion could have been granted in terms of paragraph 3 of letter dated 3.8.1988 even assuming that such a power is in the Government. It is set out that, the order dated 3.8.1989 granting the conversion is bad on its face and consequently, all actions further to letter dated 3.8.1989 are also bad and equally the approval granted for the grant of mining lease by letter dated 6.8.1996 is also bad. It is then set out that at the time of filing the Special Leave Petition, the petitioner had made inquiries about the status of the application for environmental clearance and the petitioner had received a reply dated 3.5.2001 that the papers were forwarded to Ministry of Environment and Forest and its clearance is awaited.

4. On behalf of respondent no. 2 an affidavit dated 30.8.1996 has been filed. It is pointed out that the Notification under Rule 59 of the Mineral Concession

Rules, 1960, was published in the Official Gazette No.43, Series II dated 20th January, 1977, notifying that the area as shown in Column I of the Schedule is available for grant of mining lease and had invited applications from interested persons for the grant of mining lease after the expiry of 30 days from the date of publication of the Notification in the Official Gazette. In response to that, three applications were received in 1977, of (1) M/s. A.H. Jaffar & Sons, (2) Shantaram Kantak and (iii) Vaikunt P. Raikar. The application received in 1984 was of M/s. Gomantak Investment Pvt. Ltd., respondent No. 3 herein. On the expiry of the statutory period of 12 months the first three applications were deemed to have been refused. The three applicants did not prefer any revision petition. M/s. Gomantak Investment Pvt. Ltd., on expiry of the statutory period, preferred a revision petition to the Central Government. During the pendency of the revision petition respondent No.3 filed a Writ Petition No.327/89 before this Court. By order dated 11.10.1989, this Court was pleased to permit respondent No.3 to withdraw the petition, in view of the letter of the Government dated 3.8.1989. By letter of 3.8.1989, the petitioner was allowed to convert the application for mining lease filed in the year 1984 into a Prospecting Licence, as was permissible in view of the Government of India's instructions conveyed by letter dated 3.3.1988 consequent to the 1987 Amendment to the Act. After complying with the prescribed procedure,and as respondent No.3 satisfied the requirement of MMRD Act and the Rules for grant of prospecting licence, with the approval of the Central Government, prospecting

licence was granted vide order dated 24.8.1992, which was published in the Official Gazette on 10.9.1992. Respondent No.3 paid the requisite fees and carried on operations. Respondent No.3 thereafter applied for Mining Lease on 23.11.1993 along with requisite documents including Mining Plan. On receipt of the application, and after obtaining from the Collector & Conservator of Forests the requisite NOCs., the matter was referred to the Central Government for its prior approval under the MMRD Act. By letter of 6.8.1996, the Government of India conveyed its approval for grant of Mining Lease in favour of respondent NO.3. It is pointed out that the petitioner cannot contend that they were not aware of the grant of the prospecting licence to respondent No.3. The case of the petitioners themselves was that they were concerned with extraction of ore from the mine of Parulekar which is adjacent to the suit mining area. The prospecting operations, which includes drilling, were going on for over a year in the area in respect of which the Prospecting Licence had been granted to respondent No.3. At the time of demarcation of Prospecting Licence, Smt. Parulekar was officially informed about the same. It is then pointed out that in so far as the application of the petitioner dated 9.8.88, the same was not disposed of within 12 months from the date of receipt, and as such is deemed to have been refused. The petitioner did not prefer any revision and, therefore, cannot contend that the application dated 9.8.88 is still on the live register. It is then pointed out that the application for prospecting licence dated 9.8.88 was accompanied by an affidavit of Shri Vaikunt Srinivas Poi Raikar,

as a Director of the Petitioner Company. Said Vaikunth Raikar had applied for mining lease in his own name in the year 1977 as earlier set out. It is, therefore, contended that the petition is not maintainable considering the prayer clauses, as prayed for.

5. Respondent No.3, who have been added, has have filed an affidavit through one Manoj Dhirajlal Rajani, Director of Respondent No.3. It is set out that the petition is not maintainable in law as the petitioner has no title or interest whatsoever to maintain and file the present petition. It is also set out that the petitioners have no locus standi. It is then set out that the petitioner herein had moved the Central Government by way of a revision for review of the order dated 6.8.1996. That has been rejected and consequently, the petition ought not to be entertained. It is submitted that all the four prayers sought for are infructuous. It is then pointed out that the petition is also liable to be dismissed on the ground of delay and laches. Application of the petitioner was rejected in 1988 and the petitioner has approached this Court only in 1996. There is not even a whisper explaining the delay. It is also pointed out with reference to the material on record that various statements have been made which are false. Shri Vaikunth Pai Raikar, the person who filed the application for grant on behalf of the petitioner in 1988, is the Director of the petitioner Company. Shri Raikar was one of the persons who applied for Mining Lease in the year 1977 after it was notified. It is, therefore stated that the

petitioners were all along aware that the area was notified for grant in 1977 itself. Letter dated 6.10.92 addressed to Smt. Parulekar clearly shows that the respondent has been granted Prospecting Licence in question. The petitioner therefore, cannot feign ignorance of these developments.

. Various other events regarding determination of mining concession of late Mr. Sukerkar, have the been set out and also the fact that applications had been for grant of lease made after the area was notified for grant. Two of the persons, S.Kantak and V.P.Raikar who had made the application were themselves directors of the petitioner in the year 1977 when they had applied for the Prospecting Licence in the year 1977. Their applications on the expiry of one year, were deemed to be rejected. It is then pointed out that in the year 1984, by application dated 20.12.1984, the respondent filed an application for grant of mining lease On expiry of the period of 12 months,as it was not granted they preferred a revision to the Central Government under Section 30 of the MMRD Act read with Rule 54 of the Mineral Concession Rules 1960. It is pointed out that the Union of India had issued a Circular dated 3.3.1988 whereby the State Governments were permitted to convert pending mining lease applications into Prospecting Licence applications. The petitioner had filed a petition bearing No.327/89. During the pendency of the writ petition, as the petitioner had received a letter on 3.8.1989 to the effect that the Government had agreed to convert mining lease application dated 20.12.1984 into a Prospecting

Licence application, and calling the respondent to comply with the provisions of Sub-Rule 2(g) of Rule 9 of the Mining Concession Rules, 1960, the respondent had sought permission to withdraw the writ petition which was permitted to be withdrawn by order dated 11.10.1989. It is pointed out that the Act 1987, has no consequence whatsoever in so far as lease to be granted to the respondent No.3. It is then pointed out that subsequent to the Prospecting Licence, respondent No.3 had carried out prospecting operations as required under the Rules and submitted regular reports and after that had applied for mining lease on 23.11.1993 along with the requisite documents including mining plans. It is pointed out that the Company has been granted approval for grant of mining lease. It is set out that the petitioners were fully aware that Respondent no.3 in respect of the mine in question had been granted a prospecting licence as early as 1992. Various steps taken pursuant to the prospecting Licence are set out. Notices issued to Mrs. Geetabala Parulekar for demarcation of the area and the boundaries are adverted to, as by an application dated 8.8.1993, respondent No.3 had requested for issuance of a joint lease hold boundary plan. The letter was signed by the Mines Manager of M/s. Geetabala Parulekar, namely one Mr. Naidu who was for all purposes an employee of the petitioner. It is also set out that the respondent has incurred expenses for carrying out prospecting operations in the area and for securing the mining lease, to the extent of Rs.35,00,000/- after fully complying with all procedures. It is not necessary to advert to the various other averments.

. A rejoinder has been filed. It may be mentioned that dealing with the knowledge of Vaikunth Pai Raikar, all that is set is out that it is denied for want of knowledge and it is set out that Vaikunth Pai Raikar is no longer in service of the Company. However, the averments in paragraph 6 of the affidavit-in-reply that Shri Shantaram Kantak and Shri Vaikunth P. Raikar were themselves Directors of the petitioners, have not been denied.

At this very stage, it may be pointed out that though several Judgments were cited, only those Judgments are referred to which are necessary for deciding the issues in issue. Some of the Judgments are adverted to in W.P. No.101/2003

6. Before going into the various contentions, at the outset, let us consider whether the reliefs as prayed for are capable of being granted. Part of the relief as prayed for in prayer Clause (a) is no longer available as the petitioners application dated 9.8.88 admittedly, was under the MMRD Act and the Rules framed thereunder and by operation of law, as the application was not allowed, is deemed to have been rejected on the expiry of twelve months. The petitioner did not prefer any revision application and consequently that relief is not available. In so far as the relief of notifying the area for regrant, that had already been done in 1977. Also if the area is not free for grant the application by the Respondent would be pre-mature. If that be the case prayer (b) will also not be available. The only question left to be considered is whether the action of terminating the mining concession of Sukerkar is void and so also all

consequential actions and can be interfered by this court at the instance of this petitioner. The reliefs as prayed for in the petition as originally filed in terms of prayer clause (a) & (b) could really not have been granted save for the contention that the order throwing open the area for a mining concession for regrant was invalid or void. The petitioner has basically contended that Sukerkar Mining Concession subsists as the termination was null and void. This Court while disposing of W.P.No.101/2003 filed by Sukerkar has refused to exercise its extra-ordinary jurisdiction in favour of Sukerkar on various counts. It will, therefore, not be possible to entertain such a challenge at the behest of the petitioners who are applicants herein and have filed a petition for that relief nearly after 20 years of termination of Sukerkar concession and thereby opening the area for regrant. If it subsists, in the alternative the relief sought in the present petition is not maintainable. Similarly, the relief by Sukerkar that the mining concession should be included in the schedule under Section 4 of the Amending Act 1987 has also been rejected in W.P.No. 101/2003. It is not necessary, therefore to answer the said issue once again in this petition. It may be further mentioned that the petitioner can have no locus-standi to challenge the order of termination of Sukerkar's concession or consequent declaration of the area as free from grant . That at the highest could be sought for by Sukerkar if in law such a challenge was available which he had done, but relief was declined by this Court. The remaining part of prayer clause (a) therefore also has to be rejected.

7. We may now consider the preliminary objections raised by respondent No.3. The first objection raised on behalf of respondent No.3 is that the petitioner has no locus standi to file the petition. This is based on the contention that the application made by the petitioner in 1988 under the MMRD Act had lapsed and there was no fresh application from the petitioner. Apart from that, even if the petitioner claims right pursuant to the Agreement of 1972 for purchase of iron ore from Sukerkar Concession that was for a period of 20 years and admittedly had not been renewed. Even otherwise, it is contended that it would be void for contravention of Rule 37 of MCRS 1960 Sukerkar having transferred his interest in the mines entirely to the petitioner with an irrevocable power of Attorney. Act. It will really not be possible to accept that contention and dismiss the petition on this ground. Even though the petitioner's application has been deemed to be rejected and no revision was preferred, the relief sought for in terms of prayer clause (aa) could still be considered, as to whether the application by respondent No.3 could have been considered and the prospecting licence granted. If the prospecting licence granted is not valid, then the petitioner can maintain the challenge. In our opinion, the contention that there is no locus standi has to be rejected.

. Another contention again raised as preliminary objection is that the reliefs as sought for by the petitioner cannot be granted. Even if prayer (a) no longer subsists, it will still be open for this Court

to consider prayer Clause (aa). Prayer Clause (b) may be consequential to prayer Clause (a). Prayer clause (aa) however will still have to be considered and contentions disposed of more so considering the observations by the Apex Court.

. It is also contended that the petition is hopelessly barred by laches. This contention will be adverted to after disposing of the major contentions urged on behalf of the petitioner.

8. On merits Petitioners contend that the petitioner had made an application for prospecting licence dated 9.8.1988 in respect of southern part of Sukerkar Concession admeasuring 11.30 hectares. Respondent No.3 made an application for prospecting licence dated 11.1.89 which included the whole of Sukerkar Concession and an additional area to the west. In the event, there are two contenders for the prospecting licence, the application prior in point of time ought to get preference. The application by the petitioner, it is contended, is prior in time. Respondent No.3 has been granted the prospecting licence on 24.08.1992. It was not open to grant a mining lease unless notification was published in the Official Gazette declaring that the area is free for grant. The Notification dated 5.1.77 was issued at a time when there was a controversy over the status of the Mining concession. The Notification dated 5.1.77 would become invalid in view of the order dated 29.9.1983, and if at all. the Notification under Rule 59 could be validly issued in respect of an erstwhile mining concession only after coming into force of the

Abolition of Mining Concessions Act, 1987, that is from the time the old concessions were converted into Mining Leases. The application of the petitioner being previous in point of time, considering the application of respondent No.3, non-consideration of the petitioner's application is clearly discriminatory and or arbitrary. The reason given by the respondent State not to consider the application of the petitioner is that there is a deemed refusal under Rule 11 of the Mining Concession Rules, 1960 At any rate, the prospecting licence to the respondent No.3 was granted on 24.8.1992, though the application for the prospecting licence of the respondent No.3 is dated 11.1.1989. It is then pointed out that in the list of dates given by the respondent No.3, inter alia, there are two dates, namely 21.12.1990 and 29.04.1991, the first date stating that the respondent filed revision against deemed refusal of the application for prospecting licence dated 11.1.89 and the second date stating that the Central Government set aside the deemed refusal and remanded the matter for fresh consideration. On a perusal of the documents produced by the respondent it is contended that it would be clear that the application dated 11.1.89 is a deemed refusal and consequently granting the prospecting licence is bad in law. It is submitted that what has been granted is the application dated 11.1.89 and not the application dated 20.12.1984.

. In reply to this contention of different dates, Respondent no.3 has pointed out that there is absolutely no confusion in the dates as the

respondent's application for mining lease of 1984 was converted into an application for prospecting licence with effect from 3.8.89 according to law, thereby rendering the application dated 11.1.89 redundant . In fact the petitioner himself has pleaded in paragraph 20E that the mining lease applied by Respondent No.3 in the year 1984 was converted into a prospecting licence on 3.8.89. The date 29.04.91 is as regard to the order passed by the Central Government setting aside the deemed rejection of the application of 1989.

9. Having heard the learned Counsel, at least in the pleadings as set out in the petition, even as amended, no ground is taken that the respondent State has acted arbitrarily in considering the application of respondent No.3 which was later in point of time and not considering the application of the petitioner which was earlier in point of time. The contention is that the application for mining lease of 1984 could not have been allowed to be converted into a prospecting licence in Aug.1989. It will not also be possible for the petitioner to contend that the area was not free for grant as it has not been so declared under Rule 59, after the Act of 1987 abolishing the concessions and converting them into leases. If that had been the case, the petitioner's application itself would be premature and not maintainable. Apart from that, the respondent/State had terminated Sukerkar's concession as far back on 6.4.1976 and had notified the area as free for grant on 5.01.77 by publication in the official Gazettes. Sukerkar had preferred a revision application which was rejected. Sukerkar did

not challenge the rejection. This would also be evident from the letter dated 8.12.1995 Exhibit "G" to the petitioner wherein Dr. Nishikant Sukerkar intimated to M/s. Sociedade de Fomento Ind. Ltd., of which the petitioner is a division that the mine was cancelled by the Government by order dated 6.4.76 and that the revision preferred was dismissed on 10.5.78 and according to him, the said area was free for grant. Apart from that, the notification was gazetted in the Government Gazette. There were three applications made in the year 1977, two of them by the Directors of M/s. Sociedade de Fomento Industries Ltd., of which the petitioner is a division. The application for the prospecting licence on behalf of the petitioner was signed by Mr. Vaikunth Pai Raikar, as Director who had in his own name applied for a mining licence in the year 1977. It is, therefore, not open to the petitioners after so many years to contend that termination of Sukerkar Concession is illegal. Apart from that, the petition filed by Sukerkar has also been rejected. From the documents on record, it is clear that what has been considered by the Central Government, was the petitioner's application of the year 1984. That application, as it was not disposed of,within the stipulated time was deemed to be rejected against which, a revision had been had preferred by respondent No.3. From the affidavit of respondent No.2, it would be clear that respondent No.3 preferred a revision application and during the pendency of the revision application, had also preferred a writ petition. By order dated 3.8.89, the petitioner was allowed to convert the application for mining lease filed in the year 1984

into a prospecting licence, in view of what is was set out in letter of the Government of India dated 3.3.1988. The decision of the Government of India permitting conversion of mining lease application into an application for prospecting licence, has not been challenged in this petition, nor any relief sought though there are some averments that the decision is illegal. Respondent No.3 was asked to furnish the necessary details as set out therein. The respondent No.3 complied with the said requirement and it is only after that and with prior approval of the Central Government that prospecting licence was granted to respondent No.3. Letter dated 3.8.89 would clearly show that it is with reference to the application for the mining lease dated 20.8.84. What is therefore obvious, is that the Respondent no.3 was pursuing the application for mining lease dated 20.12.84, first by preferring the revision before the Central Government and also by filing a Writ Petition 327/89 to consider its claim in respect of the application made in 1984/1989. The Central Government, as per policy decision permitted the conversion of the application for mining lease dated 20.12.84 into a prospecting licence. The Writ Petition then come to be withdrawn. As prospecting licence had not been granted in respect of the application of 1989.a revision was preferred to the Central Government and the Central Government on 29.4.91 set-aside the deemed rejection and directed the State Government to dispose of the Respondent's application on merits. Thus really speaking both the applications were pending.The State Government granted prospecting licence on 24.08.92. based on the application of 1984 which was allowed to be converted

into a prospecting licence as that application was prior in point of time and pending. Once the prospecting licence has been validly granted in favour of the respondent No.3 herein and once there was no application pending for prospecting licence by the petitioner the approval granted by the Central Government for grant of lease in favour of respondent No.3 cannot be faulted and consequently, prayer clause (aa) as prayed for will have to be rejected.

10. We will now consider the objection which was raised on behalf of respondent that the petition is hopelessly barred by laches. It is submitted that it is not a correct proposition to contend that if an order is void or nullity, the principle of laches, does not apply to writ jurisdiction and that the questions raised on merits, should be answered independently, irrespective of laches. Reliance is placed in the Judgment in Bhoop Singh vs. Union of India and ors. (1992) 3 SCC 136. It is further submitted that in any event, laches would not be tolerated beyond the period of limitation for instituting a suit for declaration that the impugned order are null and void which is three years.

In answer to this contention, it is contended on behalf of the petitioners that mere publication in the Gazette of the order of grant of prospecting licence, is not a notice to the general public. Reliance for that is placed in the case of M/s. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of U.P., A.I.R. 1979 SC 621. It is submitted that the general presumption is about the law, contravention of which

cannot be defeated on the plea of ignorance of law. Such maxim does not apply to the order of the grant of prospecting licence, which is not a notice to the public, but only a relationship between the grantor of the prospecting licence and the grantee of the prospecting licence. It was, therefore, necessary to establish that the petitioner Company had the knowledge. Apart from that, the company has denied the knowledge of the Notification. There are some other submissions made which need not be adverted to. . The order of termination is of 1976, the order throwing open the area for grant is of 1977 and the prospecting licence granted in 1992, were all gazetted. Apart from that, it was the case of the petitioners themselves that they had an agreement to purchase the extracted ore by Sukerkar since 1972. Two of their Directors, namely Shri Vaikunth Pai and Shri Shantaram Kantak had applied for mining lease of Sukerkar area in February, 1977. Shri Raikar at that time was a Director of the Company. The application by the Company for a prospecting licence was also signed by Raikar. Before granting the prospecting licence, the area had to be demarcated by giving notices to the adjoining concession-holders. Geetabala Parulekar had a mine adjoining to Sukerkar and the case of the petitioners themselves is that they were extracting ore from the said mine. It is pointed out that the rights have been vested in the respondent No.3 under the prospecting licence granted in 1992 and the Central Government has granted approval for grant of mining lease in 1996, before filing of the petition. The respondent has spent about Rs. 35.00 lakhs on exploring and prospecting

the mine. The State Government was satisfied that the prospecting had been done and decided to grant the lease. In Bhoop Singh (Supra), the Apex Court has observed as under:-

> " Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay

coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court."

. The Apex Court in Ex.Capt. Harish Uppel vs. Union of India, 1994 Supp. (2) SCC 195, has observed as under:

" The petitioner sought to contend that because of laches on his part, no third party rights have intervened and that by granting relief to the petitioner no other person's rights are going to be affected. He also cited certain decisions to that effect. This plea ignores the fact that the said consideration is only one of the considerations which the court will take into account while determining whether a writ petition suffers from laches. It is not the only consideration. It is a well-settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of Limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India- and that is what precisely the Delhi High Court has

done. We cannot say that the High Court was not entitled to say so in its discretion."

. So also in State of M.P. v/s. Nandlal, A.I.R. 1987 S.C. 251, has observed as under :

" Now, it is well settled that the power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the petitioner in filing a writ petition and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in the exercise of its writ jurisdiction. The evolution of this rule of laches or delay is premised upon a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy under the writ jurisdiction because it is likely to cause confusion and public inconvenience and bring in its train new injustices. The rights of third parties may intervene and if the writ jurisdiction is exercised on a writ petition filed after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. When the writ jurisdiction of the High Court is invoked, unexplained delay

coupled with the creation of third party rights in the meanwhile is an important factor which always weighs with the High Court."

. In the instant case, the petitioners are involved in the business of mining. The petitioner had a contract to extract ore from the mining concession adjoining to that of prospecting licence granted to respondent No.3, namely Geetabala Parulekar. Respondent No.3 has averred that one Naidu who has signed the letter demarcating boundaries was for all purposes an employee of the petitioners. This has not been specifically denied in rejoinder by the petitioner. Secondly, the notification in the year 1977 was for inviting applications for grant. It is impossible to believe that those in the mining business would not be knowing about it. In fact, two of the Directors of the Petitioner Company had applied in the year 1977 itself though in individual names. One of them is Shri Raikar who had filed an affidavit in support of the petitioner's application of 1988. It is, therefore, impossible to believe that the Company had no knowledge as the Director of the Company who had filed the affidavit along with application for the prospecting licence on behalf of the Company in the year 1988 had individually applied in 1977 for a prospecting licence. At least in the year 1988 when Shri Raikar moved the application, it would be presumed that the Company had knowledge, as an application for prospecting licence could only be made if the area was available for regrant. The case of the petitioner themselves is that they had an agreement with Sukerkar. Sukerkar had

preferred a revision which was rejected. This was during the period when there was an agreement between the petitioner and the Sukerkar. It is, thus, impossible to believe that the petitioners who were operating an adjoining mine and had an agreement with Sukerkar, would not be aware of the said facts. In the year 1992 once again the grant of prospecting licence in favour of respondent No.3 was gazetted. In 1993, Petitioner had applied for renewal of mining licence of Sukarkar by letter dated 18th May 1993, and were informed by letter of 20.7.93, that the area is not free for grant or is an existing lease for renewal.In our opinion, the petition filed in April 1996, is, therefore, also hopelessly barred by laches and must also be dismissed on that count.

11. In view of the findings given, both on merits and on laches, it is not necessary to advert to the other contentions raised. In the light of that the rule is discharged. In the circumstances, there shall be no order as to costs.

F.I. REBELLO, J.

P.V.HARDAS,J.

ssm.